IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12496 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JABARDAN JADUDAN BAROT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12496 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City on 6th August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 [PASA Act for short]. The petitioner is under detention as bootlegger from 6th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration solitary offence registered against the petitioner before Prohibition Police Station, Eastern Zone on 4th August, 2004 under the Bombay Prohibition Act. It is alleged that the petitioner was found in possession of 180 bottles of foreign prohibited liquor. The detaining authority after taking into account the investigation papers thoroughly came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited liquor and was bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public order. The detaining authority also came to the conclusion that the activities of the petitioner detrimental to the public order and adversely affecting the public health were required to be prevented forthwith. After considering other measures available in general law, the detaining authority reached to the subjective satisfaction that there was no other alternative, except to detain the petitioner as bootlegger under the PASA Act. The detaining authority, therefore, passed the order of detention of the petitioner, which is under challenge in this petition.

3. Learned advocate Mr.M.R.Prajapati, for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the order under challenge is vitiated by non-application of mind to relevant material by the detaining authority.

5. Undoubtedly, the petitioner was in judicial custody when the order of detention came to be passed by the detaining authority on 6th August, 2004. As found from the grounds of detention in this respect, the detaining authority came to the conclusion that though

the petitioner was in judicial custody, but he was likely to move an application for bail and on moving such bail application, he was likely to be released on bail by the competent court. The detaining authority also came to the conclusion that on so releasing on bail the petitioner was likely to indulging illegal anti social activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and the detention order based on such material was liable to be quashed.

7. In the present case also, except the investigation papers in the crime registered against the petitioner, no other material was placed before the detaining authority. The inference drawn by the detaining authority that the petitioner was likely to move an application for bail and further that on so moving an application for bail by the petitioner, he was likely to be released on bail, is not based upon any material. As observed by the Apex Court in the case of Amritlal and other [supra], the inference firstly that the detenu was likely to move an application for bail and the detenu was likely to be released on bail must be based on cogent material. In the present case, this inference is drawn by the detaining authority in total absence of any material resulting in vitiating the order of detention by non-application of mind. The order under challenge, therefore, is required to be quashed on this ground alone.

8. In the result, in view of the above discussion, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 6th August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner JABARDAN JADUDAN BAROT is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)